IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 122

THE IVANHOE IRRIGATION DISTRICT, *Plaintiff and Appellant,*

vs.

ALL PARTIES AND PERSONS, etc., *Defendants,*

THE STATE OF CALIFORNIA, *Defendant and Appellant,*

COURTNEY McCRACKEN, *Defendant and Appellee.*

No. 123

THE MADERA IRRIGATION DISTRICT, *Plaintiff and Appellant,*

vs.

ALL PERSONS, etc., *Defendants,*

THE STATE OF CALIFORNIA, *Defendant and Appellant,*

CARL F. STEINER, *et al.*, *Defendants and Appellees.*

No. 124

THE MADERA IRRIGATION DISTRICT, *Defendant and Appellant,*

vs.

PHILIP and JANE E. ALBONICO, *Plaintiffs and Appellees.*

No. 125

THE SANTA BARBARA COUNTY WATER AGENCY, *Plaintiff and Appellant,*

vs.

ALL PARTIES AND PERSONS, etc., *Defendants,*

MAURICE A. BALAAM, *et al.*, *Defendants and Appellees.*

Appeals From the Supreme Court of California.

Brief on Behalf of the Irrigation Districts Association of California, as Amicus Curiae in Support of Respondents.

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By stipulation of the respective counsel herein the Irrigation Districts Association of California through its authorized counsel submit for filing this Brief, *Amicus Curiae*, in support of the position of the respondents herein and in connection therewith submit to this Honorable Court the following:

The Position and Interest of the Association.

The Irrigation Districts Association of California is a voluntary association of 177 public agencies of the state, with 82 of these agencies being irrigation districts, organized under the California Irrigation Districts Act, and 95 being county water districts, reclamation districts, water storage districts, water conservation districts, and districts organized under the California Water Districts Act. The association was formed in 1910 and presently represents districts in 37 counties throughout the length of the state, serving 4½ million irrigated acres out of a total irrigated acreage of 7¼ million.

All of these public agencies have many features in common. They are generally governed by Boards elected by the voters of the community; they possess the powers of perpetual succession, of eminent domain, of general taxation or special assessment exercised either through their own taxing machinery or that of the county; and they have the power to acquire water rights and all manner of water works, and to distribute irrigation and domestic water. All of the enabling acts under which said agencies were created represent the exercise of the authority of the state for the solution of the prime problem of civilization in the arid West, the supply of domestic water to its inhabitants, and of irrigation water without which agriculture cannot exist.

Most of these agencies have as their chief function the supplying of irrigation and domestic water to communities and farming areas within the state, and in implementing and exercising these functions such agencies are vitally concerned with and interested in any matter which relates to the acquisition and distribution of water within the State of California.

Upon the entry into California of the Bureau of Reclamation in the early history of the Central Valley Project, which is recited in the decision in the *Ivanhoe* case, this Association endeavored to ascertain the practical as well as the legal aspects of the entry of the United States into the project. It was through the efforts of this Association and its representatives that there came to light the contentions and interpretations of the Bureau of Reclamation and the Secretary of Interior as to matters herein involved. It was ascertained that the so-called 9(e) contract was what the Secretary of Interior and Commissioner of Reclamation designated as a "utility-type contract"; that the contract under that designation recognized no water right of the landowners within the district except during the 40-year contract period and no right which was either appurtenant to the land or permanent; that no right of renewal was recognized or could in fact be promised or provided for; that the contract was not intended to be and would not be construed as a repayment contract; and that, therefore, there would be none of the incidents of repayment and no credit upon capital costs even when the full capital costs had been repaid.

This contention and interpretation of the Bureau of Reclamation and the Secretary of Interior prompted the Association to adopt a set of principles on November 4, 1947, which it has ever since advocated as its position as

an Association on behalf of its member organizations. The statement of principles and objectives reads as follows:

"Irrigation Districts Association of California
STATEMENT OF PRINCIPLES AND OBJECTIVES

WHEREAS:

1. The sound solution of any problem prescribes two fundamentals and their understanding, namely, the real objective to be accomplished, and the means or method to be used in attaining that objective.

2. In California, as well as in most of the seventeen Western States, the available water supply, its development, and its distribution are so interwoven with the economic and social welfare and interests of the people and their enterprises, that the water problem has become one of vital and paramount significance to the entire commonwealth.

3. To pass judgment on this problem or any proposal for its solution requires knowledge of the desired objectives, the method to be used in attaining those objectives, as well as an analysis of the probable effects and results which would accrue.

4. In California, both planning and actual construction have been underway for some time leading to the development and conservation of available water supplies; and the people of the State are now faced with the problem of adopting a feasible and equitable method of securing the distribution of this water.

5. The Irrigation Districts Association of California, for the past several years, has made a study of the problems involved, and the means and methods proposed for their solution, declaring from the beginning that certain basic principles must be safeguarded in the interests of all the districts and all the water users in California; and after thorough discussion at

various meetings of the Irrigation Districts Association, these basic principles have been accepted and adopted as sound and practical.

6. The Irrigation Districts Association's representatives and committees, which have studied these matters for years, feel that in fairness to all concerned, and in the interests of all local communities and their people, who should have the opportunity of passing intelligent judgment on these problems, the facts and issues involved should be brought to each respective community.

THEREFORE:

To this end and in the interests of each community's own study and determination of the issues and matters involved, there are submitted, herewith, a set of principles and objectives which provide the basis for a satisfactory solution to the complicated water problem of California.

1. It is a basic principle that the waters within the State of California belong to the people of California and its water agencies and users; and not to the Federal Government. This basic principle must be safeguarded and protected at all costs.

2. Government by local control is likewise a traditionally accepted basic principle and there should be no departure from it. Local areas and districts should operate their own water systems under California law.

3. Existing and vested water rights and sources of supply must be protected from any and all encroachments. Federal and other adverse claims upon those water rights and sources of supply, through commingling, storage, and other controls, handling and usage must not be permitted to impair those water rights and sources of supply.

4. New or supplemental water supplies should be fixed, definite and permanent, and not be subject to constant renegotiation.

5. Underground sources of water supply should be protected. District and private rights to such underground sources may be made the subject of adverse Federal claims if not affirmatively protected.

6. It is fundamental in California that a landowner within an irrigation district is entitled to his portion of the available water, in accordance with the assessed valuation of his land. There must be no violation or disturbance of this basic principle.

7. If and when suitable water contracts can be had, all payments made thereon should be credited, after reasonable operation and maintenance costs, to the cost of the project; and credited to the agencies making such payments, to the end that when the properly reimbursable costs have been returned to the government, the project will be locally owned.

8. The proposal that a Federal agency should own and operate intrastate projects in perpetuity, and serve water as a Federal utility, is inconsistent with state and local ownership and control of water and water rights. Such proposals should be opposed.

9. The Federal Government should not be permitted to apply its soil or land classifications to privately owned lands in order to dictate what lands can or cannot be farmed or for what crops such lands may be used.

10. Artificial and arbitrary limitations in acreage, as applied to lands in private ownership, is unworkable, unsound, and contrary to free enterprise, and must not be permitted.

11. The operation or supervision of local projects by Federal bureaus and/or their officials, through

rules, regulations or otherwise, is impractical, unsound illegal and menacing to the principles of democratic government, and must not be permitted.

12. Investigation, designing and construction of reclamation and flood control projects by Federal agencies, which are historically qualified to undertake such projects; and the use of a fair share of Federal funds, which, in fact, are contributed in Federal taxes by California, for the construction of such projects, should be approved but only when they come within the following qualifications:

a. The project should be economically feasible and capable of repaying the properly reimbursable costs.

b. Federal agencies should confine their efforts to construction of projects, with the operation and maintenance of such projects to be turned over to competent local agencies, responsible under California laws." [Ex. "82", *Ivanhoe* case, Rep. Tr. p. 95, line 7, Hearing April 3, 1951.]

The Association has been and still is opposed to the so-called acreage limitation provisions of these contracts and is also opposed to any position to the effect that the State water laws are not to be observed by the Federal Government or which would result in the State authorities not having jurisdiction over water problems within the State of California. This is particularly true as to State determination and adjudication of applications to appropriate water and the issuance of permits and licenses, subject to such conditions and restrictions as may be deemed proper under California law. State courts are historically the proper forum for the interpretation of the legal validity of such conditions and restrictions.

Opinions Below.

The opinions below are correctly and fully referred to in the brief of the respondents.

Jurisdiction.

The Association adopts the substance of respondents' contentions concerning jurisdiction, restating and adding the following:

That the State Supreme Court held the *State Statutes* relied on by appellants (District Federal Cooperation Act, Appellants' Appendix F, p. 109, and State Validation Act of 1949, Stats. 1949, p. 1511), *invalid* as a matter of state law.

That the reclamation laws of the United States make the respective state water laws of the 17 Western States, including California, applicable in relation to the control, appropriation, use and distribution of water used in irrigation in those states. That state laws determine the permanency and appurtenancy of such water rights. (Sec. 8 of the Reclamation Act of 1902—Appellants' Appendix A, p. 94—and Sec. 4 of Act of July 2, 1956—Appellants' Appendix E, p. 108.)

That the United States in its relation to intrastate water matters has been by Congress, as a matter of policy, made amenable to state laws and jurisdiction.

> "Consent is hereby given to join the United States as a defendant in any suit (1) for the adjudication of rights to the use of water of a river system or other source, or (2) for the administration of such rights, where it appears that the United States is the owner of or is in the process of acquiring water rights by appropriation under State law, by purchase, by exchange, or otherwise, and the United

States is a necessary party to such suit. The United States, when a party to any such suit, shall (1) be deemed to have waived any right to plead that the State laws are inapplicable or that the United States is not amenable thereto by reason of its sovereignty, and (2) shall be subject to the judgments, orders, and decrees of the court having jurisdiction, and may obtain review thereof, in the same manner and to the same extent as a private individual under like circumstances: Provided, That no judgment for costs shall be entered against the United States in any such suit." (66 Stats. 560, Title 43, U. S. C., Sec. 666(a).)

It is submitted that the United States cannot do by argument in *Amicus Curiae* appearances that which it could not accomplish in direct litigation.

Statutes Involved.

The respondents' citation of statutes and laws involved are hereby adopted by the Association with the addition of the following:

The Act of July 10, 1952, 66 Stats. 560, Section 666(a), Title 43, United States Code.

Questions Presented.

Does a state court have the exclusive jurisdiction to determine whether a public agency of that state has the legal power or right to execute a contract under state law? If so, did the Supreme Court of California declare that an irrigation district or other California public agency dealing with water supplies was not, and could not be, authorized by the California Legislature to execute the contracts in question?

Do the Federal laws subject the Bureau of Reclamation and Department of Interior, in reclamation projects in the 17 Western States, to state laws on water matters —or may the United States in reclamation projects ignore state laws and operate intrastate projects in contravention of state laws and solely upon Federal powers, assumed or existant?

Statement of the Case.

The Association adopts the statement of the case as set forth in the brief of the Respondents.

Argument.

The Association endorses and adopts the arguments advanced in Respondents' brief with the following comments:

Under the history of the water laws of the West existing civilizations have been developed on the basis of priority of appropriation and permanency and appurtenancy of water rights. Since before 1902 and certainly thereafter the courts of this country, both federal and state, have recognized the necessity of adhering to this principle and state customs and water laws in relation to the appropriation and use of water have been basic and so recognized by Congress.

We are here confronted with a direct clash of legal principles. Appellants assert that federal law and only federal law is at issue and that in reclamation projects the United States is exercising a constitutional power and may even in intrastate water matters bypass or ignore state water laws. The Association takes the position that in federal reclamation projects, especially intrastate in character, the whole historical background has been based

on recognition of state laws by the Bureau and Department and by Congress.

It is only where we find some administrative practice or interpretation or some implied repeal being urged to justify complete federal control that the conflict arises.

Appellants, in substance, urge that Section 8 of the Reclamation Act of 1902 has been repealed by implication or that by some process it has become inapplicable to the Central Valley Project. (*Ivanhoe* Decision at p. 58, Appendix to Appellants' Jurisdictional Statement.)

It is respectfully submitted that the basic principle that state water laws are applicable and are to be followed in federal reclamation projects is still correct and necessary and has been and is so recognized and directed by Congress.

Not only did Section 8 of the Reclamation Act of 1902 so declare but as applied to the Central Valley Project of California it was and is so claimed by the then Bureau of Reclamation Administration and it was so held in *United States v. Gerlach*, 339 U. S. 725 at *739* and footnote 15 on page 740.

Since then, and in recognition of the merits of the position supported by the Association, in 1952 Congress enacted 66 Stats. 560, Title 43, Section 666(a), United States Code.

As a statement of principle it is submitted such enactment refutes any implied withdrawal of the application of state water laws to federal reclamation projects.

In 1956, Congress enacted laws which recognize the necessity of meeting the requirements of state law. (See Sec. 4 of Act, 70 Stats. 483. 43 U. S. C. 485 h 1956 Supp., p. 108, Appendix to App. Op. Br.)

Therefore the Association contends that:

(1) The formulation of rules and regulations governing use of intrastate waters acquired by appropriation, purchase, or by any other means, is properly, a function of the state in which such water originates and is used.

(2) The source of such rules and regulations is the laws of such state and the forum in which they are interpreted and adjudicated is the courts of such state.

(3) The validity of contracts entered into by public agencies of the state is exclusively a matter for state determination.

(4) The Federal government in voluntarily entering the state for the purpose of developing the waters of the state for public use therein and distributing such waters through the media of such state agencies must conform to such rules and regulations pursuant to such interpretation and adjudication.

Conclusion.

For the reasons stated, it is respectfully submitted that the appeals be denied, or in the alternative that the judgments of the Supreme Court of California should be affirmed.

Dated: March 26, 1958.

Respectfully submitted,

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